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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-124(F)

DIGEST

Amends 312 IAC to make changes to conform rules to statutes, to conform with rule recodifications from 310 IAC to 312 IAC, to conform with agency restructuring, and to provide other technical corrections. Includes amendments to the definition of "public freshwater lake" and to standards for underwater beaches. Clarifies application of property use rules to the Indiana State Museum. Effective 30 days after filing with the secretary of state.

312 IAC 2-3-3	312 IAC 10-5-8
312 IAC 3-1-2	312 IAC 11-2-17
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312 IAC 8-1-4	312 IAC 26-3-4
312 IAC 10-5-4	312 IAC 26-4-5

SECTION 1. 312 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-3-3 Notice of consideration of application for certain designated licenses; service by license applicant

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-22-26-3; IC 14-26-2; IC 14-26-5; IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-29-4

Sec. 3. (a) Notice must be given under this section before a new license or a license renewal is issued by the department under the following statutes and rules:

- (1) IC 14-26-2 and ~~310 IAC 6-2~~ **312 IAC 11-1 through 312 IAC 11-5** (lake preservation).
- (2) IC 14-26-5 (lowering of lakes).
- (3) IC 14-29-4 (construction of channels).
- (4) IC 14-28-1 and ~~310 IAC 6-1~~ (flood control): **312 IAC 10 (flood plain management)**.
- (5) IC 14-22-26-3(2) **and 312 IAC 9-11** (possession of wild animals that may be harmful or dangerous to plants or animals).
- (6) IC 14-29-3 and ~~310 IAC 2-1~~ **312 IAC 6-5** (removal of substances from navigable waters of the state), including under IC 14-29-1 where the removal of substances from navigable waters is an element of the license.

(b) The director or the department may not issue a license until thirty (30) days after the notice required under this section has been given. Notice may be given at any time after an application for a license is filed with the department.

(c) Service of a notice must be provided by the applicant at its expense as follows:

- (1) If a license application affects real property, at least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.
- (2) In addition to service of the notice as required in subdivision (1), the license applicant shall cause notice to be given by publication (with proof of service made by a publisher's affidavit) in any of the following circumstances:
 - (A) The current address of a person entitled to notice under this rule is not ascertainable.
 - (B) The identity or existence of a person entitled to notice is not ascertainable.
 - (C) The department directs the applicant to cause notice by publication because the license application is likely to evoke general public interest.

(d) Service of a notice must be provided by the department to those persons who have requested notification of a license application that:

- (1) affects the specific real property to which the application relates; or
- (2) is of the same type as the application.

(e) Proof of service of the notifications required under subsection (c)(1) shall be provided by the applicant to the department as follows:

- (1) If service is made by certified mail with return receipt requested, by providing a mailing receipt showing successful return from the person notified.
- (2) If service is made in person or by first class mail (with a certificate of mailing), by an affidavit or affirmation on a department form including the following:
 - (A) The names and addresses of each person served.
 - (B) The date of personal service or mailing.
- (C) If service was made by mail, that a period of at least twenty-one (21) days has passed without the mailing being returned as undelivered or undeliverable.

(f) A notice under this section shall do the following:

- (1) Provide the name and address of the applicant.
- (2) Identify the statute and rule under which a permit is sought.
- (3) Identify the specific real property to which the application relates (unless the license is not related to specific real property).
- (4) Set forth any other information required by statute or rule relative to the particular type of permit sought.
- (5) Include an explanation of the options available to the persons served. These options shall be as follows:
 - (A) File a petition with the director requesting an informal hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years of age and who:
 - (i) reside in the county where the licensed activity would take place; or
 - (ii) own real property within one (1) mile of the site of the proposed or existing licensed activity.
 - (B) Request the department to notify the person in writing when an initial determination is made to issue or deny the permit. Following the receipt of notice under this clause, the person may request administrative review by the commission, under IC 4-21.5 and 312 IAC 3-1, of the initial determination by the director.

(Natural Resources Commission; 312 IAC 2-3-3; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1542)

SECTION 2. 312 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-2 Ultimate authority

Authority: IC 14-10-2-4

Affected: IC 4-21.5-4; IC 14-34-4-13; IC 14-34-15-7; IC 25-17.6

Sec. 2. (a) Except as provided in subsection (b), the commission is the ultimate authority for the department and any department board.

(b) An administrative law judge is the ultimate authority for an administrative review under the following:

- (1) An order under IC 14-34, except for a proceeding:
 - (A) concerning the approval or disapproval of a permit application or permit renewal under IC 14-34-4-13; or
 - (B) a proceeding for suspension or revocation of a permit under IC 14-34-15-7.
- (2) An order granting or denying temporary relief under IC 14-34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4-21.5-4.
- (3) An order designated as a final order in section 9 of this rule.

(c) An administrative law judge is also the ultimate authority for the board of ~~certification~~ **licensure** for professional geologists under IC 25-17.6. *(Natural Resources Commission; 312 IAC 3-1-2; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543)*

SECTION 3. 312 IAC 3-1-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-3 Initiation of a proceeding for administrative review

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-7; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-34; IC 14-37-9; IC 25

Sec. 3. (a) A proceeding before the commission, under IC 4-21.5, as well as administrative review of a determination of the board of ~~certification~~ **licensure** for professional geologists, is initiated when one (1) of the following is filed with the Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana:

- (1) A petition for review under IC 4-21.5-3-7.
- (2) A complaint under IC 4-21.5-3-8.
- (3) A request for temporary relief under IC 14-34.
- (4) A request to issue or for review of an issued emergency or other temporary order under IC 4-21.5-4.
- (5) A request concerning an integration order under IC 14-37-9.
- (6) An answer to an order to show cause under section 5 of this rule.
- (7) A referral by the director of a petition for and challenge to litigation expenses under section 13(g) of this rule.

(b) As soon as practicable after the initiation of administrative review under subsection (a), the division director shall appoint an administrative law judge to conduct the proceeding. (*Natural Resources Commission; 312 IAC 3-1-3; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543*)

SECTION 4. 312 IAC 3-1-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-14 Court reporter; transcripts

Authority: IC 14-10-2-4

Affected: IC 14; IC 25-17.6

Sec. 14. (a) The commission (or, for administrative review of orders under IC 25-17.6, the board of ~~certification~~ **licensure** for professional geologists) shall employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing.

(b) A party may obtain a transcript of the evidence upon a written request to the administrative law judge.

(c) The party who requests a transcript under subsection (b) shall pay the cost of the transcript:

- (1) as billed by the court reporting service; or
- (2) if the transcript is prepared by an employee of the commission, as determined from time to time by the commission on a per page basis after consideration of all expenses incurred in the preparation of the transcript.

(d) **For a proceeding in which the commission or its administrative law judge is the ultimate authority**, a court reporter who is not an employee of the commission will be engaged to record a hearing upon a written request by a party filed at least forty-eight (48) hours before a hearing. (*Natural Resources Commission; 312 IAC 3-1-14; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1322; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543*)

SECTION 5. 312 IAC 3-1-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-18 Petitions for judicial review

Authority: IC 14-10-2-4

Affected: IC 4-21.5-5-8; IC 14; IC 25

Sec. 18. (a) A person who wishes to take judicial review of a final agency action entered under this rule shall serve copies of a petition for judicial review upon the persons described in IC 4-21.5-5-8.

(b) The copy of the petition required under IC 4-21.5-5-8(a)(1) to be served upon the ultimate authority shall be served

at the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204

This address applies whether the commission or an administrative law judge is the ultimate authority.

(c) Where the department or the state historic preservation review board is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Director
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W256
Indianapolis, Indiana 46204

(d) Where the board of ~~certification~~ **licensure** for professional geologists is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Indiana State Geologist
Indiana University
611 North Walnut Grove
Bloomington, Indiana 47405-2208

(e) The commission and its administrative law judge provide the forum for administrative review under this rule. Neither the commission nor the administrative law judge is a party. (*Natural Resources Commission; 312 IAC 3-1-18; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1323; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544*)

SECTION 6. 312 IAC 8-1-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-1-4 Definitions

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14-22-11-1; IC 14-31-1

Sec. 4. The following definitions are supplemental to those set forth at 312 IAC 1 and apply throughout this article:

(1) "Authorized representative" means the director or another person designated by the director.

(2) "Berry" means the fruiting body of:

- (A) a blackberry;
- (B) a blueberry;
- (C) a dewberry;
- (D) an elderberry;
- (E) a gooseberry;
- (F) a huckleberry;
- (G) a mulberry;
- (H) a raspberry;
- (I) a serviceberry; and
- (J) a strawberry.

(3) "DNR property" means land and water owned, licensed, leased, or dedicated under IC 14-31-1, or under easement to the state or managed by the department. The following areas are, however, exempted from the term:

- (A) Public freshwater lakes.
- (B) Navigable waterways.
- (C) Buildings and grounds (**other than those of the Indiana state museum**) not located at recreational, natural, or historic sites.

(4) "Fallen cone" means the fruiting body of a coniferous tree that is no longer attached to a living tree.

(5) "Firearm or bow and arrows" means:

- (A) a firearm;
- (B) an air gun;
- (C) a CO₂ gun;
- (D) a spear gun;
- (E) a bow and arrows;
- (F) a crossbow; or
- (G) another mechanical device;

that can be discharged and is capable of causing injury or death to an animal or damage to property.

(6) "Fishing tournament" means an activity involving fifteen (15) or more watercraft used for taking fish where:

- (A) persons compete for a trophy, citation, cash, or prize; or
- (B) a fee is charged to participants.

(7) "Fruit" means the fruiting body of:

- (A) cherries;
- (B) grapes;
- (C) apples;
- (D) hawthorns;
- (E) persimmons;
- (F) plums;
- (G) pears;
- (H) pawpaws; and
- (I) roses.

(8) "Green" means the aboveground shoots or leaves of:

- (A) asparagus;
- (B) dandelion;
- (C) mustard;
- (D) plantain; and
- (E) poke.

(9) "Group boat dock" means an artificial basin or enclosure for the reception of watercraft that is owned and maintained by adjacent landowners for their private usage.

(10) "Leaf" means the leaf of a woody plant for use in a leaf collection or similar academic project.

(11) "License" means:

- (A) a license;
- (B) a permit;
- (C) an agreement;
- (D) a contract;
- (E) a lease;
- (F) a certificate; or
- (G) other form of approval;

issued by the department. A license may authorize an activity otherwise prohibited by this rule.

(12) "Mushroom" means edible fungi.

(13) "Nut" means the seeds of:

- (A) hazelnuts;
- (B) hickories;
- (C) oaks;
- (D) pecans; and
- (E) walnuts.

(14) "Recreation area" means an area that is managed by the department for specific recreation activities.

(15) "Vehicle" means a motorized conveyance.

(Natural Resources Commission; 312 IAC 8-1-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 552, eff Jan 1, 2000; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544)

SECTION 7. 312 IAC 10-5-4, AS ADDED AT 24 IR 3394, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-4 Exemption from licensing requirements for qualified utility line crossings

Authority: IC 14-10-2-4; IC 14-28-2-24

Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes an exemption for the placement of a qualified utility line crossing in a floodway.

(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:

- (1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.
- (2) Within a salmonid stream designated under ~~327 IAC 2-1-6(c)(1)~~. **327 IAC 2-1.5-5(a)(3)**.
- (3) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 (1997) ~~or in~~ the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of waterway under subsection (c)(8).
- (4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place a utility line crossing under this section must conform to the following conditions:

- (1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.
- (2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.
- (3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.
- (4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.
- (5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.
- (6) No pesticide will be used on the banks.
- (7) If a utility line transports a substance that may cause "water pollution" as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.
- (8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:
 - (A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.
 - (B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:
 - (i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.
 - (ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, which is higher, if the bed is composed of consolidated materials.
 - (C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:
 - (i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.
 - (ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.
 - (D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).
- (9) If a utility line is placed above the bed of a river or stream, the following conditions are met:
 - (A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

- (i) Twelve and one-half (12½) feet above the ordinary high watermark.
- (ii) Three (3) feet above the regulatory flood elevation.
- (B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:
 - (i) The minimum clearance required under clause (A).
 - (ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.
- (C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.
- (10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for an exemption under this subsection.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1545*)

SECTION 8. 312 IAC 10-5-8, AS ADDED AT 24 IR 3398, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-8 Exemption from licensing requirements for qualified outfall projects

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes an exemption for the placement of a qualified outfall project in a floodway.

(b) This section does not authorize the placement of an outfall project:

- (1) within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana;
- (2) within a salmonid stream designated under ~~327 IAC 2-1-6(c)(1)~~; **327 IAC 2-1.5-5(a)(3)**;
- (3) below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 15 IR 2385 in the Roster of Indiana Waterways Declared Navigable; or
- (4) where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place an outfall project under this section must conform to the following conditions:

- (1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.
- (2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.
- (3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.
- (4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.
- (5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.
- (6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.
- (7) The size of the outfall project shall not exceed any of the following dimensions:
 - (A) Ten (10) square feet in cross sectional flow area as determined by the summation of cross sectional area of conduits

within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.

(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.

(10) The outlet structure shall:

(A) be supported by a headwall, slopewall, or anchored end section; and

(B) conform to the bank of the waterway.

(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.

(12) Construction debris and material not used as backfill shall be removed from the floodway.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546*)

SECTION 9. 312 IAC 11-2-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-17 “Public freshwater lake” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 17. “Public freshwater lake” means a lake that has been used by the public with the acquiescence of a riparian owner. The term does not include any of the following:

(1) Lake Michigan.

(2) A lake lying wholly or in part within the city of **East Chicago, Gary, or Hammond**.

(3) A privately owned body of water used for the purpose of, or created as a result of, surface coal mining.

(*Natural Resources Commission; 312 IAC 11-2-17; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547*)

SECTION 10. 312 IAC 11-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-4 Underwater beaches

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 4. (a) A written license under IC 14-26-2 and this rule is required to place material for an underwater beach within a public freshwater lake.

(b) The director or a delegate shall not issue a license for the placement of filter cloth or an impermeable material beneath or in an underwater beach.

(c) The director or a delegate shall not issue a license for the placement of an underwater beach in a significant wetland.

(d) To qualify for a license to place an underwater beach in an area of special concern, the underwater beach must:

(1) not exceed six hundred twenty-five (625) square feet;

(2) not extend more than thirty (30) feet lakeward of the normal waterline or shoreline or to a depth of six (6) feet, whichever occurs earlier;

(3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;

- (4) be comprised of clean, nontoxic pea gravel;
- (5) not exceed six (6) inches thick; and
- (6) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its average normal water level.

(e) To qualify for a license to place an underwater beach in a developed area, the underwater beach must:

- (1) be comprised of clean, nontoxic pea gravel;
- (2) not exceed six (6) inches thick;
- (3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;
- (4) extend no more than fifty (50) feet lakeward from the waterline or shoreline or beyond a depth of six (6) feet, whichever occurs earlier; and
- (5) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its normal water level.

(f) If beach material has been placed previously under this section, the additional material must not:

- (1) extend beyond the limits of the previous beach material; and
- (2) exceed the size restrictions specified in ~~subsection~~ **subsections (d) and (e)**.

(g) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. *(Natural Resources Commission; 312 IAC 11-4-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)*

SECTION 11. 312 IAC 26-1-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-1-13 “SCORP” defined

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 13. “SCORP” means ~~the Indiana Statewide Comprehensive Outdoor Recreation Plan (1994-1999)~~. **“SCORP 2000-2004: A New Millennium, A New Tradition”**. *(Natural Resources Commission; 312 IAC 26-1-13; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)*

SECTION 12. 312 IAC 26-2-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-2-3 Project assurances

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. (a) An applicant for a grant must provide project proposal assurances as set forth in this section.

(b) A project assurance must include the following:

- (1) A definition of abbreviated terms used in the provision assurances.
- (2) Assurances that the acquisition, development, and maintenance of projects will be performed under lawful departmental standards. These assurances must set forth:
 - (A) accommodation for handicapped persons as otherwise provided by law;
 - (B) conformance with state bidding and contract requirements, including a nondiscrimination clause;
 - (C) project processing;
 - (D) record maintenance, including a financial management system;
 - (E) terms for maintenance of a site after the completion of a project;
 - ~~(F) if a project includes land acquisition, a demonstration of compliance with 310 IAC 18; and~~
 - ~~(G)~~ **(F)** a demonstration the project is compatible with existing site conditions, including sewers and utility facilities.

(Natural Resources Commission; 312 IAC 26-2-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548)

SECTION 13. 312 IAC 26-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-3-4 Grant application for a community park or recreation area

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 4. A municipal corporation that seeks a grant under this rule must complete a written application in a narrative form that includes the following:

- (1) An application completed on a department form.
- (2) A project description that specifies:
 - (A) how the property will be acquired;
 - (B) the type of development proposed;
 - (C) the type of park, for example, neighborhood, community, or block; and
 - (D) the users expected, for example, inner city, weekend, youth, family, or senior citizens.
- (3) A cost breakdown of the amount of the proposed project and assurances that at least fifty percent (50%) of the cost of the proposed project will be satisfied through public or private funds, labor, or property provided by the project sponsor.
- (4) Identification of expenses and donations of property incurred before the date of the application. The responsibility established by this subdivision is a continuing responsibility that requires the applicant to update the following information submitted to the department to include expenses incurred after the date of an application but before the application is approved:
 - (A) The name, address, and telephone number of the person performing the work.
 - (B) The expenses paid or incurred by the applicant.
 - (C) For property donations, evidence of the donor's gift, the date given, and the value of the contribution.
- (5) A description of grant assistance received from a source other than a grant under this article that has been received or is anticipated for use at the property.
- (6) A description of how the project will be adapted for use by handicapped persons. ~~and conforms with 675 IAC 2.2.~~
- (7) A description of how the applicant will remove or otherwise address overhead wires and other environmental intrusions on the property.
- (8) A description of how the applicant provided for public participation on the proposed project. Public participation must include a public meeting that was advertised and conducted for the purpose of considering the proposed project. Where negative comments were received with respect to the proposed project, the application must specify how the subject of those comments was mitigated or why mitigation was impracticable.
- (9) A summary of the natural, historical, archaeological, architectural, cultural, economic, community development, or other significance of the site. The archaeological review process must comply with ~~310 IAC 19.~~ **312 IAC 21 and 312 IAC 22.**
- (10) An environmental assessment checklist.
- (11) An analysis of each item set forth in section 5 of this rule with respect to the ratings of applications.
- (12) An authenticated copy of a resolution by the applicant that authorizes the filing of the application and designates an individual to act on behalf of the applicant relative to the application.
- (13) Maps that identify the following:
 - (A) The location and exterior boundaries of the property.
 - (B) All:
 - (i) leases;
 - (ii) permanent or temporary easements for access;
 - (iii) streets;
 - (iv) utility rights-of-way;
 - (v) scenic preservation easements; or
 - (vi) other encumbrances on the property.Documentation to evidence the encumbrance should also be included.
 - (C) Any area to be acquired or developed. A development project must be properly labeled, color coded, or keyed to a legend. A deed, lease, or contract to evidence the acquisition or development should also be included, as well as any escrow agreement.
- (14) Photographs of existing buildings, recreational facilities, and natural site features.
- (15) A preliminary design and floor plan for each building, shelter, and other structure. The plan must be drawn to scale and show how the facility will be constructed to accommodate handicapped persons.
- (16) A copy of any deed, lease, or easement for the parcels to be acquired or developed.
- (17) A copy of any construction permit required by a governmental agency to implement the plans.

(Natural Resources Commission; 312 IAC 26-3-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1278; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548)

SECTION 14. 312 IAC 26-4-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-4-5 Professional standards for historic preservation projects involving acquisitions

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 5. The following standards apply if a project under this rule involves land acquisition:

~~(1) The project must demonstrate compliance with 310 IAC 18.~~

~~(2)~~ (1) Careful consideration shall be given to the type and extent of property rights that are required to assure the preservation of the historic resource. The preservation objective shall determine the exact property rights to be acquired.

~~(3)~~ (2) A property shall be acquired in fee simple when absolute ownership is required to ensure its preservation.

~~(4)~~ (3) Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archaeological, architectural, or cultural significance.

(Natural Resources Commission; 312 IAC 26-4-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1549)

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